

ORIGINAL

FILED

DISTRICT COURT OF GUAM

APR 13 2005

MARY L.M. MORAN
CLERK OF COURT

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IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL ATOIGUE BURGOS
a/k/a "Mike,"

Defendant.

CRIMINAL CASE NO. 05-00007

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B), the United States and the defendant, MICHAEL ATOIGUE BURGOS a/k/a "Mike," enter into the following plea agreement:

1. The defendant agrees to enter a guilty plea to an Indictment charging him with conspiracy to import approximately 116.5 grams, gross weight, of methamphetamine hydrochloride, a schedule II controlled substance, in violation of Title 21, United States Code, Sections 952(a), 960, and 963.

2. The defendant, MICHAEL ATOIGUE BURGOS, further agrees to fully and truthfully cooperate with Federal law enforcement agents concerning their investigation of the importation, possession, and distribution of controlled substances, and related unlawful activities,

1 including the disposition of profits from and assets relating to such activities. He agrees to testify
2 fully and truthfully before any grand juries and at any trials or proceedings against any co-
3 conspirators if called upon to do so for the United States, subject to prosecution for perjury for
4 not testifying truthfully. The United States will make this cooperation known to the Court prior
5 to the defendant's sentencing. The defendant further understands that he remains liable and
6 subject to prosecution for any non-violent Federal or Territorial offenses that he does not fully
7 advise the United States, or for any material omissions in this regard. In return for this
8 cooperation, the United States agrees not to prosecute defendant in the District of Guam or the
9 Commonwealth of the Northern Mariana Islands for any other non-violent Federal offenses
10 which he reveals to Federal authorities.

11 3. The defendant, MICHAEL ATOIGUE BURGOS, understands and agrees that any and
12 all assets or portions thereof acquired or obtained by him as a direct or indirect result of illegal
13 trafficking in drugs or used to facilitate such illegal activity shall be surrendered to the United
14 States or any lawful agency as may be directed by the Court. The assets to be surrendered
15 include, but are not limited to, cash, stocks, bonds, certificates of deposit, personal property and
16 real property.

17 4. The defendant, MICHAEL ATOIGUE BURGOS, further agrees to submit to a
18 polygraph examination by any qualified Federal polygraph examiner if called upon to do so by
19 the government. The defendant understands that such polygraph examinations may include, but
20 will not be limited to, his knowledge of or involvement in unlawful drug and money laundering
21 related activities, his knowledge of others' involvement in such activities, and the identification
22 of any and all assets and conveyances acquired in whole or in part by the defendant or others
23 through unlawful drug and money laundering related activities or the use of such assets or
24 conveyances to further such unlawful activities. Defendant understands that the government will
25 rely on the polygraph in assessing whether he has been fully truthful.

26 5. The defendant, MICHAEL ATOIGUE BURGOS, understands that the maximum
27 sentence for conspiracy to import approximately 116.5 grams, gross weight, of
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1 methamphetamine hydrochloride is life imprisonment, an \$8,000,000 fine, and a minimum
2 mandatory term of twenty (20) years of incarceration which may not be stayed or suspended by
3 the court, since defendant was previously convicted of a felony drug offense. Any sentence
4 imposed shall include a term of supervised release of at least 10 years in addition to such terms
5 of imprisonment since defendant was previously convicted of a felony drug offense, as well as
6 such restitution as the court may order and a \$100.00 special assessment fee. Defendant
7 understands that if he violates a condition of supervised release at any time prior to the expiration
8 of such term, the court may revoke the term of supervised release, thereby resulting in the
9 additional incarceration of defendant for not more than five (5) years.

10 The total special assessment fee of \$100.00 must be paid immediately upon sentencing.
11 The government will recommend a fine within the Sentencing Guidelines range. If defendant is
12 financially unable to immediately pay the fine in full, defendant agrees to make a full disclosure
13 of his financial status to the United States Attorney's Office by completing a Financial Disclosure
14 Form (OBD-500) for purpose of fixing a monthly payment schedule. Defendant understands
15 that, by law, interest accrues on any remaining balance of the debt. If defendant cooperates as set
16 forth in Paragraphs 2, 3, and 4, the government will recommend that defendant receive the
17 minimum term of incarceration legally available under the applicable statutes and Sentencing
18 Guidelines. If defendant does not fully cooperate as set forth in Paragraphs 2, 3, and 4, the
19 government will recommend a sentence of incarceration within the applicable statutes and
20 Guidelines range it may deem appropriate.

21 6. If defendant provides full, truthful, and substantial assistance to investigating
22 federal agencies, the government will move the Court, as provided by Section 5K1.1, United
23 States Sentencing Guidelines, hereinafter USSG, and 18 U.S.C. Section 3553(e), for a downward
24 departure from the Guidelines and the statutory minimum sentence. Defendant understands the
25 following:

26 (a) At or before the time of sentencing, the United States will advise the Court of
27 any assistance provided by defendant in the prosecution of another person who
28 has committed a criminal offense. The United States may, but shall not be required to,
make a motion requesting the Court to depart from the sentencing range called for by the

1 guidelines in the event defendant provides "substantial assistance." This decision shall be
2 in the sole discretion of the United States Attorney.

3 (b) It is understood and agreed that a motion for departure shall not be made, under any
4 circumstances, unless defendant's cooperation is deemed "substantial" by the United
5 States Attorney. The United States has made no promise, implied or otherwise, that
6 defendant will be granted a "departure" for "substantial assistance." Further, no promise
7 has been made that a motion will be made for departure even if defendant complies with
8 the terms of this agreement in all respects, but has been unable to provide "substantial
9 assistance."

10 (c) The United States agrees to consider the totality of the circumstances,
11 including but not limited to the following factors, in determining whether, in the
12 assessment of the U.S. Attorney, defendant has provided "substantial assistance"
13 which would merit a government request for a downward departure from the
14 applicable guideline sentencing range:

15 (1) the United States' evaluation of the significance and usefulness
16 of any assistance rendered by defendant;

17 (2) the truthfulness, completeness, and reliability of any
18 information or testimony provided by defendant;

19 (3) the nature and extent of defendant's assistance;

20 (4) any injuries suffered or any danger or risk of injury to defendant
21 or defendant's family resulting from any assistance provided by
22 defendant; and,

23 (5) the timeliness of any assistance provided by defendant.

24 (d) It is understood that even if a motion for departure is made by the United
25 States, based upon defendant's perceived "substantial assistance," the final
26 decision as to how much, if any, reduction in sentence is warranted because of
27 that assistance, rests solely with the District Court.

28 7. The defendant understands that to establish a violation of conspiracy to import
methamphetamine hydrochloride, the government must prove each of the following elements
beyond a reasonable doubt:

First: there was an agreement between the defendant and at least
one other person to import approximately 116.5 grams, gross weight,
of methamphetamine hydrochloride, and

Second, the defendant became a member of the conspiracy knowing of its object
to import methamphetamine hydrochloride, and intending to accomplish it.

8. The defendant understands that the United States Probation Office will calculate
a "sentencing range" within the United States Sentencing Guidelines. The defendant understands
the Sentencing Guidelines are advisory, but will be used by the District Court in fashioning the

1 sentence. The defendant also understands that the facts he stipulates to herein will be used by
2 probation, pursuant to § 1B1.2 of the Sentencing Guidelines, in calculating the advisory
3 guidelines level:

4 a. The defendant was born in 1960, and is a citizen of the United States.

5 b. If the defendant cooperates with the United States by providing information
6 concerning the unlawful activities of others, the government agrees that any self-incriminating
7 information so provided will not be used against defendant in assessing his punishment, and
8 therefore, pursuant to § 1B1.8 of the sentencing guidelines, such information should not be used
9 in determining the applicable guidelines range.

10 c. Beginning sometime in early February 2005 and continuing to February 6, 2005,
11 the defendant participated in a conspiracy with other individuals, including Franklin John
12 Taitano, to import and distribute methamphetamine hydrochloride from the Philippines into
13 Guam. As part of the conspiracy, the defendant agreed to pick up an express mail parcel that was
14 addressed as follows:

15 From: Mark A. Bucayo, 45 Wellfareville St., Mandaluyong City, Philippines

16 To: Patty Leon Guerrero, P. O. Box 208, Agana, Guam 96932 USA

17 The parcel, a cardboard shipping box, left the Philippines on about January 24, 2005, and arrived
18 in Guam on February 2, 2005. The parcel contained 116.5 grams, gross weight, of
19 methamphetamine hydrochloride that were in 28 straws, and concealed inside the sidewall of the
20 parcel. The defendant intended to deliver said parcel to Taitano.

21 d. Pursuant to USSG Section 1B1.3, the parties agree and stipulate that the total
22 amount of methamphetamine hydrochloride attributable to the defendant as relevant conduct
23 which shall be considered for sentencing purposes in this case is the net weight, exclusive of
24 packaging, after laboratory analysis of the above-referenced drug which was concealed inside the
25 above-referenced parcel. A forensic chemist analyzed the controlled substance inside the 28
26 straws, and determined that it was 89 grams, net weight, of ice or d-methamphetamine
27 hydrochloride of 99% purity.
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1 e. On about December 18, 1991, the defendant was convicted of a felony drug offense,
2 to-wit, importation of approximately 25 grams of methamphetamine, in Criminal Case No. 91-
3 00056 in the U.S. District Court of Guam.

4 f. The defendant understands that notwithstanding any agreement of the parties, the
5 United States Probation Office will make an independent application of the Sentencing
6 Guidelines. The defendant acknowledges that should there be discrepancies in the final
7 sentencing guidelines range projected by his counsel or any other person, such discrepancy is not
8 a basis to withdraw his guilty plea.

9 9. The defendant understands that this plea agreement depends on the fullness and
10 truthfulness of his cooperation. Therefore, defendant understands and agrees that if he should
11 fail to fulfill completely each and every one of his obligations under this plea agreement, or make
12 material omissions or intentional misstatements or engage in criminal conduct after the entry of
13 his plea agreement and before sentencing, the government will be free from its obligations under
14 the plea agreement; thus defendant, in addition to standing guilty of the matters to which he has
15 pled pursuant to this agreement, shall also be fully subject to criminal prosecution for other
16 crimes. In any such prosecution, the prosecuting authorities, whether Federal, State, or Local,
17 shall be free to use against him, without limitation, any and all information, in whatever form,
18 that he has provided pursuant to this plea agreement or otherwise.

19 10. The defendant understands that his sentencing may be continued, at the sole
20 discretion of the United States, until after the indictment and trial of any associates involved.
21 This will also enable the Court to see the full degree of the defendant's cooperation. The
22 defendant therefore waives any right he may have to any speedy sentencing and hereby agrees to
23 any continuance of his sentencing date as it may become necessary.

24 11. In exchange for the government's concessions in this plea agreement, the defendant
25 waives any right to appeal or to collaterally attack this conviction but reserves the right to appeal
26 the sentence actually imposed in this case. The defendant understands and agrees that the
27 government has bargained for a criminal conviction arising from his criminal conduct. If at any
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1 time defendant's guilty plea or conviction is rejected, withdrawn, vacated or reversed, for
2 whatever reason, or is rendered invalid for any reason, or if any change of law renders the conduct
3 for which he was convicted to be non-criminal, defendant agrees that he will enter a guilty plea to
4 another charge encompassing the same or similar conduct. In such event, defendant waives any
5 objections, motions or defenses based upon the Statute of Limitations, Speedy Trial Act, or
6 constitutional restrictions as to the time of bringing such charges.

7 12. The defendant acknowledges that he has been advised of his rights as set forth below
8 prior to entering into this plea agreement. Specifically, defendant has been fully advised of, has
9 had sufficient opportunity to reflect upon, and understands the following:

10 a. The nature and elements of the charge and the mandatory minimum penalty provided
11 by law, if any, and the maximum possible penalty provided by law;

12 b. His right to be represented by an attorney;

13 c. His right to plead not guilty and the right to be tried by a jury and at that trial, the
14 right to be represented by counsel, the right to confront and cross-examine witnesses
15 against him, and the right not to be compelled to incriminate himself, that is, the right not to
16 testify;

17 d. That if he pleads guilty, there will not be a further trial of any kind on the charges to
18 which such plea is entered so that by entering into this plea agreement, he waives, that is, gives
19 up, the right to a trial;

20 e. Because this plea is entered pursuant to Federal Rule of Criminal Procedure
21 11(c)(1)(B), the defendant understands that he may not withdraw his guilty plea even if the court
22 does not accept the sentencing recommendation of the government or his counsel;

23 f. That, upon entry of a plea of guilty, or thereafter, the Court may ask him questions
24 about the offenses to which he has pled, under oath, and that if he answers these questions
25 under oath, on the record, his answers may later be used against him in prosecution for perjury or
26 false statement if an answer is untrue;

1 g. That he agrees that the plea agreement is voluntary and not a result of any force,
2 threats or promises apart from this plea agreement;

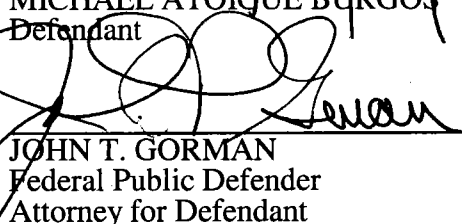
3 h. That he has had this agreement translated for him into his native language, and he
4 fully understands it;

5 i. The defendant is satisfied with the representation of his lawyer and feels that his
6 lawyer has done everything possible for his defense.
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9 DATED: 4-13-05

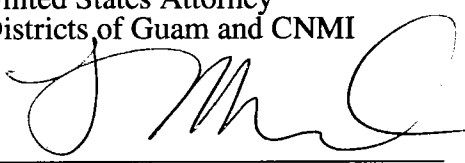

MICHAEL ATOIGUE BURGOS
Defendant

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11 DATED: 4/13/05


JOHN T. GORMAN
Federal Public Defender
Attorney for Defendant

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14 LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and CNMI

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16 DATED: 4/13/05

17 By: 
MARIVIC P. DAVID
Assistant U.S. Attorney

18
19
20 DATED: 4-13-05


RUSSELL C. STODDARD
First Assistant U.S. Attorney